

**Kaiser Foundation Hospitals and Kaiser Foundation  
Health Plan of Oregon and Service Employees  
International Union, Local No. 49, AFL-CIO.  
Case 36-CA-3541**

November 25, 1981

**SUPPLEMENTAL DECISION AND  
ORDER**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING, JENKINS, ZIMMERMAN,  
AND HUNTER**

On September 18, 1981, the Board issued a Decision and Order<sup>1</sup> in this proceeding dismissing the 8(a)(1) and (5) complaint in its entirety.<sup>2</sup> On October 19, 1981, Fred Tenderella,<sup>3</sup> one of the employees whom Respondent refused to discharge, as requested by the Union, filed a request for "attorney's fees and other costs" under the Equal Access to Justice Act.<sup>4</sup>

<sup>1</sup> 258 NLRB No. 4.

<sup>2</sup> The complaint alleged violation of Sec. 8(a)(1) and (5) of the Act based on Respondent's refusal to comply with the union-security provisions of the collective-bargaining agreement between Respondent and the Union.

<sup>3</sup> At the hearing in this matter, Tenderella moved to intervene. Tenderella's motion to intervene was denied by the Administrative Law Judge. The Board affirmed the denial of Tenderella's motion to intervene, but considered Tenderella's "appeal" to the Administrative Law Judge's Decision as an *amicus curiae* brief.

<sup>4</sup> P. L. 96-481, Sec. 201 Stat. 2325 (1981) (to be codified in 5 U.S.C.).

We find no merit in Tenderella's contention that he is entitled to an award under the Equal Access to Justice Act.

As noted above, the Board's Decision and Order in this matter issued September 18, 1981; since the Equal Access to Justice Act did not become effective until October 1, 1981, Tenderella's request for an award is untimely.<sup>5</sup> Further, the question of timeliness aside, Section 102.143 of the Board's Rules and Regulations, which deals with, *inter alia*, entitlement and eligibility, limits awards to "a respondent in an adversary adjudication who prevails in that proceeding." (Emphasis supplied.) Tenderella was not the respondent in this proceeding; indeed, Tenderella was not even a "party" in this matter. Accordingly, Tenderella is not entitled to an award under the Equal Access to Justice Act.

**ORDER**

It is hereby ordered that Fred Tenderella's request for an award under the Equal Access to Justice Act be, and it hereby is, denied.

<sup>5</sup> See *G. W. Hunt d/b/a Foremost Foods Distributing*, 258 NLRB No. 158 (1981). We find no merit in Tenderella's contention that his request is timely because the Board's Order is not "final" until after the time has passed for filing a motion for reconsideration. Under Sec. 102.48(d)(2) of the Board's Rules and Regulations, any party may move for reconsideration of the Board's decision and order within 20 days of issuance. However, Sec. 102.48(d)(3) provides that filing of a motion for reconsideration "shall not operate to stay the effectiveness" of the Board's action. See also Sec. 102.148(c), which provides that the filing of a motion for reconsideration does not stay the time for filing an application for an award under the Equal Access to Justice Act.